IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.899 OF 1992.

1. Tukaram Gangaram Date.

2. Maruti Hari Patil

3. Sopan Manik Chavan

4. Ganpat Dnyanu Patil

5. Hajarising Purohit

6. Vijay Dattatraya Dhawale

7. Laxman Damaji Jadhav

8. Sadashiv Rakhamaji Tambare

9. Keru Balaji Hande

10. Pandurang Lakshaman Jadhav

11. Ganpat Venkat Naidu

12. Kisan Yashwant Dhomase

All residing at Ramprasad Varma
Chawl, Parsiwadi, Ghatkopar, (W)
Bombay, 400 086. .. Petitioners.

V/s

1. The Deputy Collector (Enc)
   Topiwala College Buld.
   Mulund, Bombay-80.

2. The State of Maharashtra

3. Ramprasad Rasharak Varma
   Residing at Ramprasad Varma
   Chawl, Parsiwadi,Ghatkopar (W)
   Bombay-86 ..Respondents.

Mr. D.K. Ghaisas for the petitioners
Mr. S.K. Chinchalikar, AGP for respondent Nos. 1 and 2.

CORAM : D.G.DESHPANDE, J.

DATE : 13TH SEPTEMBER, 2006.

P.C.

. Heard Mr. Ghaisas for the petitioners and Mr. Chinchalikar, AGP for the respondents 1 and 2, respondent No.3 is absent, Advocate Mr. R.D. Mishra to appear for respondent No.3 is absent.

2. The dispute in this petition revolves under declaration of particular slum area. There are all 12 petitioners. They are occupying their respective huts at Ramprasad Varma Chawl, Parsiwada, Ghatkopar (West), Bombay-86. To be specific regarding this area the glance at the report of the Commissioner will be necessary. The said report of the Commissioner is at Exh. "D" of this petition and Inspection note states that property involved in Appeal 81/1991 was inspected. It is a property comprising of 35 structures or rooms. There is no dispute that this property is included within 139/23.

3. Government of Maharashtra published a Notification under Section 3 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 in the Gazette dated December 5, 1985. Schedule of area is given in the said Notification. It consists several CTS numbers which are declared as slum including upon which the hutments of the petitioners and others are situated, in respect of which Exh."D" Commissioner's report is there on record.

4. Respondent No.3 raised objection to this Notification as provided by the Act itself by filing an appeal before the authorities the Maharashtra Slum Areas (I.C. & R) Tribunal vide Appeal No. 267/1980. This appeal was allowed and matter was remanded to the competent authority for further enquiry and disposal according to law. After the remand the second order came to be passed and that order is Exh."F" It is dated 18th January, 1992 and the declaration published in the Government Gazette on 5/12/1985 and as stated above was set aside. Therefore, the petitioners who are occupants have filed this petition.

5. The basic contention of the petitioners is that

the appellate authority while setting aside the Notification, did not take into consideration the object of the Act i.e. Maharashtra Slum Areas (Improvement, clearance and Redevelopment) Act, 1971 (hereinafter referred to as Act of 1971) and it was declared in the Notification itself as "Competent Authorities satisfied that the orders specified in the Schedule hereto (hereinafter referred to as the said order) are sources of danger to the health, safety or convenience of the public of that area and of its neighbourhood by reason of it being overcrowded and lacking in basic amenities, has been rendered insanitary, squalid, and/or otherwise". My attention was invited to the report of the Commissioner Exh. "D" which is filed by the advocate for the petitioner in this regard. This report shows that there were 5 structures consists of 35 room were acquired by 150 persons. No latrine was available on that property. Though there were 48 latrines were constructed by the Bombay Municipal Corporation they were at a distance of 150 feet and other 12 latrines were at a distance of 250 feet but all these 70 latrines were used by the entire Parsiwadi area consisting about 400 family members.

6. So far as water supply is concerned, the Commissioner's report shows that so far as these 35 structures are concerned, there are no taps but there were 2 taps commonly provided in the other properties behind chawl No. II and they are for common use.

7. Passages were narrow having 3' to 5' between the structure to structure. The structures in II and III are semi pucca in nature and structures IV and V are pucca. From these observations of the Commissioner and the object for which the Notification was issued it was urged by the Counsel for the petitioner that the Tribunal while setting aside the Notification did not take into consideration these important aspects. The Tribunal also come to the conclusion that 60 WCs were sufficient to meet the requirement. This does not appear to be correct because so far as these 35 families or huts there were independent latrines or WCS. The respondent No.3 at whose instance the appeals were filed has not chosen to file affidavit in this petition. The learned AGP supports the Notification and therefore, considering these aspects, the impugned order of the Tribunal dated 14th January, 1992, is set aside and the declaration dated 31st October, 1985, published under

Government Gazette dated 5/3/1985, so relates to the appellants property in respect of CTS Nos. 130/240 to 242, 139/22 to 27 and 139/60 to 68 lying at Parsiwadi, situated at Village Kirol, Taluka Kurla, B.S.D. Bombay is up held as valid.

. In the circumstances, no order as to costs.

(D.G.DESHPANDE, J.)